In the Supreme Court of the United States

October Term 1941

No. .....

THE STATE OF WYOMING,)
Petitioner,)
vs.)
YELLOWSTONE PARK COMPANY,)
a corporation,)
Respondent.)

BRIEF IN SUPPORT OF PETITION

QUESTION INVOLVED

This cause was originally tried in the State Court upon an agreed statement of facts (R. P. 6), and it will be noted no controversy exists between the parties as to the fact of the importation and use within the Yellowstone National Park of certain quantities of gasoline; that the tax levied by the State of Wyoming has not been paid thereon. Paragraph V of the agreed statement of facts sets out verbatim the Hayden-Cartwright Act of June 16, 1936, and inasmuch as this Act has been referred to on several occasion in our petition for the Writ of Certiorari, of which this brief is a part, it will not be necessary to again quote that statute.

Paragraph VI of the agreed statement of facts, with particular reference to said Hayden-Cartwright Act, contains the following language:

> "That the question for determination by the Court is whether or not the provisions above quoted subjects

the defendant to the State tax of four cents (4c) per gallon on the gasoline used by the defendant in its trucks and busses within the confines of Yellowstone National Park."

STATEMENT OF FACTS

This suit, as filed, had for its purpose the recovery of the statutory tax of four cents per gallon upon all gasoline imported by the respondent into Yellowstone National Park and used and consumed therein by said respondent in propelling and operating its motor vehicles.

SPECIFICATIONS OF ERROR

The petitioner relies upon the following specifications of error:

I.

The Supreme Court of the State of Wyoming erred in holding and deciding, on January 20, 1942, that Section 10 of the Hayden-Cartwright Act of 1936 (Title IV, U.S.C.A. Section 12), applied only to sales of gasoline within Yellowstone National Park and not to the use thereof within said area.

II.

That the opinion and decision of the Supreme Court of the State of Wyoming of January 20, 1942, has resulted in the suspension of the operation and enforcement of a Federal statute, namely, Section 10, Hayden-Cartwright Act of June 16, 1936, with respect to the use of gasoline in Yellowstone Park, and by reason thereof has caused and will continue to cause, until reversed by this Honorable Court, substantial loss of revenue to the State of Wyoming.

III.

That the opinion and decision of the Supreme Court of the State of Wyoming of January 20, 1942, is in conflict with the decision and opinion of the United States Circuit Court of Appeals, Eighth Circuit, made and rendered on the 30th day of March, 1942.

IV.

That the decision of the Supreme Court of the State of Wyoming is contrary to the law.

V.

That the decision of the Supreme Court of the State of Wyoming is contrary to the evidence.

ARGUMENT

The Supreme Court of the State of Wyoming, under the agreed facts in the case, had before it for determination only one question, the answer to which depended upon the proper construction and interpretation of a Federal statute. In the reported decision of the Wyoming case (121 Pac. 2nd, 170), the Court made the following statement:

> "The question involved in this case is as to whether or not an act of Congress permitting the State to levy a gasoline tax on sales of gasoline in Yellowstone Park includes permission to levy a tax on the use thereof by the importer."

No contention was made in the case that any state had received or been paid the tax on the gasoline in question, and we, therefore, must accept it as a fact that, so far, the gasoline upon which the tax was sought has completely escaped taxation. In fact, we believe it is perfectly proper

to state to this Court that upon the argument before the Supreme Court of the State of Wyoming it was conceded by the respondent that no tax had been paid to any state on said gasoline. In the reported case (State vs. Yellowstone Park, supra) the Court said:

> "The company imported certain gasoline and sold it. It paid a tax upon the goods so sold, and to that extent no controversy between the parties exists."

Admittedly, if the gasoline in question had been purchased within the Park boundaries, even under respondent's contention, the Wyoming tax would have been paid. No sufficient reason appears therefor to exempt this same gasoline purchased tax free outside of the park, imported therein, and used by respondent. It would seem that this method results in placing the imported gasoline in a favored position or status with respect to the tax, as compared with gasoline which this respondent and others might purchase and use within the Park boundaries.

We do not believe that Congress, in passing the Hayden-Cartwright Act, desired or intended this result, and as absolute evidence of this fact, we call attention to certain legislation which was passed by Congress on October 9, 1940, 54 Stat. 1060, 4 U.S.C.A. 12. This legislation removed any doubt which might have existed theretofore, as to the meaning of the Hayden-Cartwright Act by striking out the phrase appearing in said Act,

> "upon sales of gasoline and other motor vehicle fuels,"

and inserting in lieu thereof the following:

> "upon, with respect to, or measured by, sales, purchases, storage or use of gasoline or other motor vehicle fuels."

There was also a further amendment which eliminated the phrase,

"upon such fuels,"

and inserted in lieu thereof the phrase,

"with respect to such fuels."

If Congress had originally intended to permit the tax to be imposed upon "sales" only, then it would have been very reluctant,—and some compelling reason must have existed to induce it,—to amend the Act to include a tax upon "use".

The Buck Act above referred to was only a portion of certain highway legislation contained in the same bill. The Senate Committee report contains, among other things, the following statement with reference to that portion of the bill amending the Hayden-Cartwright Act as above set out:

> "* * * it contains certain *clarifying* amendments to section 10 of the Federal Highway Act of June 16, 1936, (known as the Hayden-Cartwright Act permitting taxation of sales of gasoline and other motor vehicle fuel sold in Federal areas for private purposes) * * *." (Underscoring supplied.)

Prior to the submission of the original cause to the Supreme Court of the State of Wyoming, a case based upon similar facts and involving an interpretation of the Hayden-Cartwright Act had been decided by the United States District Court of the state of Minnesota, and in that case the Minnesota court held that the Hayden-Cartwright Act applied only to "sales" of gasoline, and did not permit, according to the Minnesota court, the imposition of "use" or "privilege" taxes within Federal area. (State of Minnesota vs. Ristine, 36 Fed. Sup. 3).

The Wyoming Supreme Court, in its decision of January 20, 1942, quotes with approval, and in fact we believe largely bases its decision upon, the Minnesota case, supra. That case had then been appealed to the United States Circuit Court of Appeals for the Eighth Circuit and was then under advisement by that court.

We have called attention to the amendment to the Hayden-Cartwright Act passed by Congress on October 9, 1940, and it will be observed that the Wyoming Supreme Court construes the passage of that amendment as an admission by Congress that it was intended to effect a change in the then existing statute, and on page 171 of the Wyoming Supreme Court's decision (121 Pac. 2nd, 170) we find the following language:

> "Attention in the Minnesota case, supra, was doubtless called to this change in the law on account of the general rule 59 C. J. 1097, that 'it will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment. So a change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended.' "

In this connection the Minnesota case (Federal District Court decision) likewise views the amendment as effecting a change in the law rather than merely for the purpose of clarification.

On March 30, 1942, the United States Circuit Court of Appeals for the Eighth Circuit rendered its opinion and decision, reversing the lower court, and holding, in effect, that the Hayden-Cartwright Act was broad enough to embrace all of the various kinds of state gasoline taxes, including "use" tax. (State of Minnesota vs. Colonel H. J.

Keeley et al., decided March 30, 1942, Cause No. 11966, United States Circuit Court of Appeals, Eighth Circuit.) It will be noted that there was a substitution of parties defendant in the Circuit Court of Appeals.

It has always been contended by the State of Wyoming that Congress did not use the word "sales" in the Hayden-Cartwright Act in a technical or narrow sense. The purpose of this legislation was to permit an imposition of a State gasoline tax within Federal areas not theretofore subject to the tax. Our position is well illustrated by the language used in the decision of the Circuit Court of Appeals, supra. This case not having been officially reported, we are compelled to resort to the typewritten manuscript of the opinion which we have before us. We quote from said opinion as follows:

> "• • • The defendants moved to dismiss the action, in effect upon the ground that the Minnesota gasoline tax was not such a form of tax as was within the language or purview of the Hayden-Cartwright Act, and that the State therefore was not entitled to any relief. The trial court sustained the motion, and, in a written opinion, 36 F. Supp. 3, 6, declared: 'It is my opinion that the United States consented to the imposition and collection of "sales" taxes on motor fuels, and to such taxes only. It did not consent to the imposition of "use" or "privilege" taxes.'
>
> "From the purpose and history of the statute, we do not believe that Congress intended that its language should be given such a rigid and narrow interpretation. The general purpose of the Hayden-Cartwright Act clearly was to further and extend the program of highway improvement which had been initiated by the Federal Aid Highway Act of 1916, through the matching of federal and state funds. • • •"

Again, further on in its opinion, the Circuit Court of Appeals discussed the effect of the passage of the Buck Resolution, and we again quote from the decision of the Circuit Court of Appeals:

> "* * * All of this seems to us only to confirm that the original intention of Congress, in enacting section 10 of the Hayden-Cartwright Act, was as we have indicated it above to have been, and that the purpose of section 7 of the Buck Act was simply to make such 'clarifying amendments' as could leave no room for further possible misconstruction and as would require an immediate and full effectuation of congressional purpose. In this situation, we can see no sound reason for holding that there is any such narrow absoluteness in the language 'all taxes * * * upon sales of gasoline' as to require a judicial denial of the right of the State of Minnesota to the benefit of taxes which have been collected by the Post Exchange pursuant to the laws of that State, and which are now being held until their proper disposition has been the subject of legal determination. * * *"

CONCLUSION

We do not wish to extend this argument further, as we are clearly of the opinion that a study of the record will leave no room for doubt that the petitioner herein is, at least, entitled to the issuance of a Writ of Certiorari to review the decision of the Wyoming Supreme Court.

We submit that the Supreme Court of the State of Wyoming has decided a Federal question of substance not theretofore determined by this Court, and that said decision is in direct conflict with the decision of the United States Circuit Court of Appeals, Eighth Circuit, made and rendered on the 30th day of March, 1942, in the case of State of Minnesota vs. Colonel H. J. Keeley et al. It therefore

clearly appears that the State of Wyoming is entitled to have a review of this decision by this Court, and we respectfully request the issuance of such Writ.

Respectfully submitted,

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